

§ 1.1031(a)-2

26 CFR Ch. I (4-1-03 Edition)

Section 1031(a)(1) does not apply to any exchange of interests in a partnership regardless of whether the interests exchanged are general or limited partnership interests or are interests in the same partnership or in different partnerships. An interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K is treated as an interest in each of the assets of the partnership and not as an interest in a partnership for purposes of section 1031(a)(2)(D) and paragraph (a)(1)(iv) of this section. An exchange of an interest in such a partnership does not qualify for nonrecognition of gain or loss under section 1031 with respect to any asset of the partnership that is described in section 1031(a)(2) or to the extent the exchange of assets of the partnership does not otherwise satisfy the requirements of section 1031(a).

(2) *Exchanges of property not solely for property of a like kind.* A transfer is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or property which does not meet the requirements of section 1031(a), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). Similarly, a transfer is not within the provisions of section 1031(a) if, as part of the consideration, the other party to the exchange assumes a liability of the taxpayer (or acquires property from the taxpayer that is subject to a liability), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). A transfer of property meeting the requirements of section 1031(a) may be within the provisions of section 1031(a) even though the taxpayer transfers in addition property not meeting the requirements of section 1031(a) or money. However, the nonrecognition treatment provided by section 1031(a) does not apply to the property transferred which does not meet the requirements of section 1031(a).

(b) *Definition of "like kind."* As used in section 1031(a), the words *like kind* have reference to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under that section, be exchanged for property of a different

kind or class. The fact that any real estate involved is improved or unimproved is not material, for that fact relates only to the grade or quality of the property and not to its kind or class. Unproductive real estate held by one other than a dealer for future use or future realization of the increment in value is held for investment and not primarily for sale. For additional rules for exchanges of personal property, see § 1.1031 (a)-2.

(c) *Examples of exchanges of property of a "like kind."* No gain or loss is recognized if (1) a taxpayer exchanges property held for productive use in his trade or business, together with cash, for other property of like kind for the same use, such as a truck for a new truck or a passenger automobile for a new passenger automobile to be used for a like purpose; or (2) a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate; or (3) a taxpayer exchanges investment property and cash for investment property of a like kind.

(d) *Examples of exchanges not solely in kind.* Gain or loss is recognized if, for instance, a taxpayer exchanges (1) Treasury bonds maturing March 15, 1958, for Treasury bonds maturing December 15, 1968, unless section 1037(a) (or so much of section 1031 as relates to section 1037(a)) applies to such exchange, or (2) a real estate mortgage for consolidated farm loan bonds.

(e) *Effective date relating to exchanges of partnership interests.* The provisions of paragraph (a)(1) of this section relating to exchanges of partnership interests apply to transfers of property made by taxpayers on or after April 25, 1991.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6935, 32 FR 15822, Nov. 17, 1967; T.D. 8343, 56 FR 14854, Apr. 12, 1991; T.D. 8346, 56 FR 19937, May 1, 1991]

§ 1.1031(a)-2 Additional rules for exchanges of personal property.

(a) *Introduction.* Section 1.1031(a)-1(b) provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property

for property of a different kind or class. This section contains additional rules for determining whether personal property has been exchanged for property of a like kind or like class. Personal properties of a like class are considered to be of a "like kind" for purposes of section 1031. In addition, an exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class. Under paragraph (b) of this section, depreciable tangible personal properties are of a like class if they are either within the same General Asset Class (as defined in paragraph (b)(2) of this section) or within the same Product Class (as defined in paragraph (b)(3) of this section). Paragraph (c) of this section provides rules for exchanges of intangible personal property and non-depreciable personal property.

(b) *Depreciable tangible personal property*—(1) *General rule.* Depreciable tangible personal property is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property of a like kind or like class. Depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same General Asset Class or within the same Product Class. A single property may not be classified within more than one General Asset Class or within more than one Product Class. In addition, property classified within any General Asset Class may not be classified within a Product Class. A property's General Asset Class or Product Class is determined as of the date of the exchange.

(2) *General Asset Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a General Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87-56, 1987-2 C.B. 674. These General Asset Classes describe types of depreciable tangible personal property that frequently are

used in many businesses. The General Asset Classes are as follows:

- (i) Office furniture, fixtures, and equipment (asset class 00.11),
- (ii) Information systems (computers and peripheral equipment) (asset class 00.12),
- (iii) Data handling equipment, except computers (asset class 00.13),
- (iv) Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines) (asset class 00.21),
- (v) Automobiles, taxis (asset class 00.22),
- (vi) Buses (asset class 00.23),
- (vii) Light general purpose trucks (asset class 00.241),
- (viii) Heavy general purpose trucks (asset class 00.242),
- (ix) Railroad cars and locomotives, except those owned by railroad transportation companies (asset class 00.25),
- (x) Tractor units for use over-the-road (asset class 00.26),
- (xi) Trailers and trailer-mounted containers (asset class 00.27),
- (xii) Vessels, barges, tugs, and similar water-transportation equipment, except those used in marine construction (asset class 00.28), and
- (xiii) Industrial steam and electric generation and/or distribution systems (asset class 00.4).

(3) *Product Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a Product Class consists of depreciable tangible personal property that is listed in a 4-digit product class within Division D of the Standard Industrial Classification codes, set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC Manual). Copies of the SIC Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce. Division D of the SIC Manual contains a listing of manufactured products and equipment. For this purpose, any 4-digit product class ending in a "9" (i.e., a miscellaneous category) will not be considered a Product Class. If a property is listed in more than one product class, the property is treated as listed in any one of those product classes. A

property's 4-digit product classification is referred to as the property's "SIC Code."

(4) *Modifications of Rev. Proc. 87-56 and SIC Manual.* The asset classes of Rev. Proc. 87-56 and the product classes of the SIC Manual may be updated or otherwise modified from time to time. In the event Rev. Proc. 87-56 is modified, the General Asset Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the date the modification is published in the Internal Revenue Bulletin, unless otherwise provided. Similarly, in the event the SIC Manual is modified, the Product Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the effective date of the modification. However, taxpayers may rely on the unmodified SIC Manual for exchanges occurring during the one-year period following the effective date of the modification. The SIC Manual generally is modified every five years, in years ending in a 2 or 7 (e.g., 1987 and 1992). The effective date of the modified SIC Manual is announced in the FEDERAL REGISTER and generally is January 1 of the year the SIC Manual is modified.

(5) *Modified classification through published guidance.* The Commissioner may, by guidance published in the Internal Revenue Bulletin, supplement the guidance provided in this section relating to classification of properties. For example, the Commissioner may determine not to follow, in whole or in part, any modification of Rev. Proc. 87-56 or the SIC Manual. The Commissioner may also determine that two types of property that are listed in separate product classes each ending in a "9" are of a like class, or that a type of property that has a SIC Code is of a like class to a type of property that does not have a SIC Code.

(6) *No inference outside of section 1031.* The rules provided in this section concerning the use of Rev. Proc. 87-56 and the SIC Manual are limited to exchanges under section 1031. No inference is intended with respect to the classification of property for other purposes, such as depreciation.

(7) *Examples.* The application of this paragraph (b) may be illustrated by the following examples:

Example 1. Taxpayer A transfers a personal computer (asset class 00.12) to B in exchange for a printer (asset class 00.12). With respect to A, the properties exchanged are within the same General Asset Class and therefore are of a like class.

Example 2. Taxpayer C transfers an airplane (asset class 00.21) to D in exchange for a heavy general purpose truck (asset class 00.242). The properties exchanged are not of a like class because they are within different General Asset Classes. Because each of the properties is within a General Asset Class, the properties may not be classified within a Product Class. The airplane and heavy general purpose truck are also not of a like kind. Therefore, the exchange does not qualify for nonrecognition of gain or loss under section 1031.

Example 3. Taxpayer E transfers a grader to F in exchange for a scraper. Neither property is within any of the General Asset Classes, and both properties are within the same Product Class (SIC Code 3533). With respect to E, therefore, the properties exchanged are of a like class.

Example 4. Taxpayer G transfers a personal computer (asset class 00.12), an airplane (asset class 00.21) and a sanding machine (SIC Code 3553), to H in exchange for a printer (asset class 00.12), a heavy general purpose truck (asset class 00.242) and a lathe (SIC Code 3553). The personal computer and the printer are of a like class because they are within the same General Asset Class; the sanding machine and the lathe are of a like class because neither property is within any of the General Asset Classes and they are within the same Product Class. The airplane and the heavy general purpose truck are neither within the same General Asset Class nor within the same Product Class, and are not of a like kind.

(c) *Intangible personal property and nondepreciable personal property—(1) General rule.* An exchange of intangible personal property of nondepreciable personal property qualifies for nonrecognition of gain or loss under section 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (e.g., a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates.

(2) *Goodwill and going concern value.* The goodwill or going concern value of a business is not of a like kind to the goodwill or going concern value of another business.

(3) *Examples.* The application of this paragraph (c) may be illustrated by the following examples:

Example 1. Taxpayer K exchanges a copyright on a novel for a copyright on a different novel. The properties exchanged are of a like kind.

Example 2. Taxpayer J exchanges a copyright on a novel for a copyright on a song. The properties exchanged are not of a like kind.

(d) *Effective date.* Section 1.1031(a)-2 is effective for exchanges occurring on or after April 11, 1991.

[T.D. 8343, 56 FR 14854, Apr. 12, 1991]

§ 1.1031(b)-1 Receipt of other property or money in tax-free exchange.

(a) If the taxpayer receives other property (in addition to property permitted to be received without recognition of gain) or money—

(1) In an exchange described in section 1031(a) of property held for investment or productive use in trade or business for property of like kind to be held either for productive use or for investment,

(2) In an exchange described in section 1035(a) of insurance policies or annuity contracts,

(3) In an exchange described in section 1036(a) of common stock for common stock, or preferred stock for preferred stock, in the same corporation and not in connection with a corporate reorganization, or

(4) In an exchange described in section 1037(a) of obligations of the United States, issued under the Second Liberty Bond Act (31 U.S.C. 774 (2)), solely for other obligations issued under such Act, the gain, if any, to the taxpayer will be recognized under section 1031(b) in an amount not in excess of the sum of the money and the fair market value of the other property, but the loss, if any, to the taxpayer from such an exchange will not be recognized under section 1031(c) to any extent.

(b) The application of this section may be illustrated by the following examples:

Example 1. A, who is not a dealer in real estate, in 1954 exchanges real estate held for investment, which he purchased in 1940 for \$5,000, for other real estate (to be held for productive use in trade or business) which has a fair market value of \$6,000, and \$2,000 in cash. The gain from the transaction is \$3,000, but is recognized only to the extent of the cash received of \$2,000.

Example 2. (a) B, who uses the cash receipts and disbursements method of accounting and the calendar year as his taxable year, has never elected under section 454(a) to include in gross income currently the annual increase in the redemption price of non-interest-bearing obligations issued at a discount. In 1943, for \$750 each, B purchased four \$1,000 series E U.S. savings bonds bearing an issue date of March 1, 1943.

(b) On October 1, 1963, the redemption value of each such bond was \$1,396, and the total redemption value of the four bonds was \$5,584. On that date B submitted the four \$1,000 series E bonds to the United States in a transaction in which one of such \$1,000 bonds was reissued by issuing four \$100 series E U.S. savings bonds bearing an issue date of March 1, 1943, and by considering six \$100 series E bonds bearing an issue date of March 1, 1943, to have been issued. The redemption value of each such \$100 series E bond was \$139.60 on October 1, 1963. Then, as part of the transaction, the six \$100 series E bonds so considered to have been issued and the three \$1,000 series E bonds were exchanged, in an exchange qualifying under section 1037(a), for five \$1,000 series H U.S. savings bonds plus \$25.60 in cash.

(c) The gain realized on the exchange qualifying under section 1037(a) is \$2,325.60, determined as follows:

Amount realized:	
Par value of five series H bonds	\$5,000.00
Cash received	25.60
Total realized	5,025.60
Less: Adjusted basis of series E bonds surrendered in the exchange:	
Three \$1,000 series E bonds	\$2,250.00
Six \$100 series E bonds at \$75 each	450.00
	2,700.00
Gain realized	2,325.60

(d) Pursuant to section 1031(b), only \$25.60 (the money received) of the total gain of \$2,325.60 realized on the exchange is recognized at the time of exchange and must be included in B's gross income for 1963. The \$2,300 balance of the gain (\$2,325.60 less \$25.60) must be included in B's gross income for the taxable year in which the series H bonds are redeemed or disposed of, or reach final maturity, whichever is earlier, as provided in paragraph (c) of § 1.454-1.

(e) The gain on the four \$100 series E bonds, determined by using \$75 as a basis for each